



FSMA Privacy Policy for its fit and proper assessments for regulated functions

The Financial Services and Markets Authority (hereafter “the FSMA” or “we”) attaches great importance to the protection of your personal data and ensures that it complies with the European data protection legislation (General Data Protection Regulation (GDPR)) and with the Belgian legislation concerning the protection of personal data.

The present Privacy Policy provides an overview of the personal data processed by the FSMA as part of its enquiries relating to the fit and proper requirements for persons who will carry out regulated functions, the purposes of and basis for this processing, the period for which the data will be stored, the sharing of the data with third parties and your rights in respect of the data.

As regards other data processing activities or general information on the processing of personal data by the FSMA, please see the [FSMA's general Privacy Policy](#) or, where applicable, another specific privacy policy available on the [website](#).

WHEN DOES THE PRESENT PRIVACY POLICY APPLY?

This Privacy Policy applies to the enquiries conducted by the FSMA in order to determine whether persons who are candidates for a regulated function, or who already carry out such a function at a company under the FSMA's supervision or at a company for which the FSMA is competent in this regard under the applicable legislation, (continue to) meet the fit and proper requirements.

These enquiries are carried out, among other times, when a candidate is appointed or reappointed, when the termination of a function is announced, or if the person or company in question reports a change that may be relevant for the assessment. In addition, the FSMA may start making enquiries at its own initiative (for example, as part of a periodic check or if it has found certain types of evidence in the course of its ongoing supervision, during an inspection of the company or in response to reports by third parties, such as other authorities or whistleblowers).

This Privacy Policy is addressed to persons who carry out or have carried out a regulated function or who have applied to carry out such a function (or to such a person's permanent representative in the case of legal entities) and to all other (natural) persons concerned by the above-mentioned assessments (such as persons with whom the above-mentioned natural persons cohabit, persons who represent a particular company, referees, etc.). If the candidate provides data on other persons to the FSMA, he or she must inform the said persons of this Privacy Policy.

Those carrying out “regulated functions” include members of the statutory governing body, executive managers, holders of certain key functions (compliance function, actuarial function, risk function, internal audit), heads of distribution, natural person intermediaries, natural person independent financial planners, natural person currency exchange offices, recognized compliance officers, etc.

WHAT PERSONAL DATA DO WE PROCESS?

- **For candidates and those who carry out or carried out a regulated function**

The FSMA receives personal data about a candidate first of all from the candidate him/herself, via a questionnaire for candidates for a regulated function, via written questions or via an interview.

The remaining data are obtained from external sources, such as the company in question, from referees, via whistleblowers' reports or from other supervisory authorities (such as the National Bank of Belgium, the Belgian Financial Intelligence Processing Unit (CTIF-CFI) or foreign supervisory authorities) or from the Public Prosecutor's Office.

Lastly, the FSMA also processes information that is publicly available (e.g. in the press, in public databases, etc.) or which it already holds internally.

This includes the following categories of personal data:

- **Identifying information**
e.g. surname, first name, National register number, nationality, home address and place of residence, identity card/passport number, language, date and place of birth;
 - **Professional information**
This includes:
 - professional contact information (e.g. your professional phone number and email address);
 - Information about your professional career (e.g. the name of the previous and current employers, employment periods, information about the current and previous positions and mandates held) and about your role in certain legal entities (e.g. in the capacity of a permanent representative, member of a governing body, executive manager or holder of a key function, exercise of control of a legal entity);
 - information about professional training and skills (e.g. your diplomas and continuing education);
 - information relating to a public office (including whether this office indicates membership in a political party);
 - information relating to the regulated functions you perform, have performed or for which you are a candidate or have been a candidate (e.g. type of function, name of the company, start and end dates) and business, professional or commercial ties with the company in question or related companies;
 - information about the outcome of the enquiry (approval/refusal/withdrawal of the candidacy, termination of a function, etc.) and the fit and proper assessment;
 - **photo**
as found on the identity card, for example;
 - **judicial (including criminal), ethical, administrative and tax data**
including an extract from the criminal register;
 - **financial data**
e.g. inclusion on a list of defaulting debtors such as the Individual Credit Register, capacity of a stakeholder or beneficiary of a trust or foundation;
 - **personal ties**
including information relating to the existence of personal ties to those who carry out regulated functions in the company in question or in related companies;
 - **other information that may have an impact on the assessment of your fitness and propriety** in the context of carrying out a regulated function.
- **For persons with whom the above-mentioned natural persons cohabit**

The FSMA receives this information from the candidate via the questionnaire for candidates for a

regulated function. The questionnaires are available on the website of the FSMA.

This includes the following categories of personal data:

- **Identifying information**
e.g. surname, first name, place of residence;
- **Professional information**
e.g. business, professional or commercial ties with the company in question or with related companies;
- **Judicial information**
e.g. involvement in judicial proceedings against the company in question or a related company.

- **For referees**

These are persons whose names the candidate provided or whom the FSMA itself has identified as relevant to contact for the purposes of the enquiry.

The FSMA receives information from referees either via the candidate who has provided the name of the referee as part of his or her candidacy or via other channels, such as public sources or directly from the persons contacted.

This includes the following categories of personal data:

- **Identifying information**
e.g. surname, first name;
- **Professional information**
e.g. employer, title/position, department, professional email address and phone number, professional experience.

- **For persons who represent the company in question**

The FSMA receives these data from the candidate him- or herself, via the part of the questionnaire that is to be filled in by the company.

This includes the following categories of personal data:

- **Identifying information**
e.g. surname, first name;
- **Professional information**
e.g. capacity within the company.

- **For advisors whose services the candidate calls upon in an IORP or in the governing body of an IORP**

The FSMA receives this information from the candidate or from the IORP, via the questionnaire for candidates for a regulated function.

This includes the following categories of personal data:

- **Identifying information**

e.g. surname, first name;

- **Professional information**

e.g. professional experience, information about training and specialization.

WHAT ARE THE PURPOSES OF AND BASIS FOR OUR USE OF YOUR PERSONAL DATA?

The FSMA collects, stores, uses and shares the above-mentioned personal data in order to

- conduct the fit and proper assessment, document this assessment, communicate about it with the appropriate stakeholders (including the company in question) and take enforcement measures in the event of non-compliance with the legal requirements (*public-interest tasks and the exercise of public authority – the applicable legal basis is set out in each case in the respective questionnaires*);
- meet its obligation to cooperate with other national and international authorities (as part of its public-interest tasks and the exercise of public authority); and
- comply with its legal archiving obligations.

It also uses the data received in a candidate's dossier for the assessment of future candidacies for the same person for the same function or for functions for which there are comparable fit and proper requirements, as well as in the course of its supervision of ongoing compliance with those requirements for the regulated functions the person already performs.

The FSMA may also (further) use the data collected for other purposes if the processing of the data is required with a view to carrying out other public-interest functions with which it is entrusted by national or European legislation (Article 75, § 3 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services).

HOW LONG WILL WE STORE YOUR DATA?

The FSMA stores personal data no longer than necessary to accomplish the purpose for which it was collected.

The personal data of persons who have carried out a regulated function, or have applied to do so, will in any case be stored by the FSMA as long as that person is in office or as long as his/her application is under consideration by the FSMA. After the person's last term of office or the end of the last application under consideration (e.g. if the application has been turned down or withdrawn) – whichever of these occurs last – the personal data will be further stored as long as necessary for the performance of the public-interest tasks of the FSMA, considering amongst other things:

- the period where a (automatic) legal ban on holding the position of member of the statutory governing body, being entrusted with the day-to-day management of a company, or being responsible for an independent audit function may be in effect against a person because of a criminal conviction for certain offences (as set out in Article 20 of the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms and the references to that Article in the various supervisory laws with which the FSMA supervises compliance); and
- the applicable periods of limitation (for claims that may be made against the FSMA based on its decision in a given dossier).

Lastly, the FSMA, as a federal authority, is subject to the Archive Law of 24 June 1955 and is thus not free to destroy documents in its possession. As a result, it is possible that personal data may be stored longer in documents that the FSMA must preserve for archival purposes in the public interest, provided the necessary guarantees are provided.

WITH WHOM DO WE SHARE YOUR DATA?

Within the bounds of its obligation of professional secrecy, the FSMA may share your data, where necessary and applicable, with:

- the company where you perform or wish to perform a regulated function;
- referees (in cases where the FSMA contacts them);
- other authorities, including other financial supervisory authorities (such as the National Bank of Belgium or foreign authorities that carry out comparable tasks), the Belgian Financial Intelligence Processing Unit (CTIF-CFI), the Public Prosecutor's Office;
- the candidate about whom you, as a referee, are being contacted.

It is possible that the FSMA may exchange personal data with a supervisory authority from a country outside the EEA (third country) in the context of international cooperation. In that case, the FSMA ensures that:

- the third country ensures an adequate level of protection ([adequacy decision of the European Commission - Article 45 GDPR](#)), or
- that appropriate safeguards are provided ([Article 46 GDPR](#)), in particular where the financial supervisory authority of a non-EEA country has undertaken to provide safeguards that are laid down in an administrative arrangement such as the [Administrative arrangement for the transfer of personal data between EEA and non-EEA financial supervisory authorities](#); or
- it can invoke a derogation, and in particular a derogation for transfers that are necessary for important reasons of public interest ([Article 49 GDPR](#)).

The FSMA will transfer personal data only if they are adequate, relevant and limited to what is necessary for the purposes for which they are being transferred.

As regards sharing your data with service providers used by the FSMA (such as ICT service providers or lawyers), please see the FSMA's [general Privacy Policy](#) (see "With whom do we share your data?" and "Does the FSMA process your data outside the European Economic Area?").

WHAT ARE YOUR RIGHTS AND HOW CAN YOU EXERCISE THEM?

Under the GDPR, you have a set of rights as regards your personal data. You may therefore ask the FSMA to be able to access, rectify or delete your personal data. In addition, you have the right to object to the processing of your data on certain specific and legitimate grounds, and in certain cases you may ask that the processing of your personal data be restricted.

However, the FSMA is not required to take action on such requests in all cases. Some of these rights have a very specific scope or are subject, in the GDPR, to special conditions or exceptions (such as exceptions to your rights in view of the public interest). Moreover, because of the FSMA's obligation of professional secrecy, you will not be able to exercise certain rights (such as the right of access, rectification and objection) if your personal data were not submitted to the FSMA by you ([Article 46bis of the Law of 2 August 2002 on the supervision of the financial sector and on financial services](#)). These limitations on your rights apply as long as you have not obtained, where applicable, legal access to your administrative dossier which the FSMA holds on you and that contains the data in question.

If you wish to exercise your privacy rights, please send a request by email to dataprotection@fsma.be or by post to the FSMA's Data Protection Officer. For information on the procedure to follow and about your privacy rights in general, please see the FSMA's [general Privacy Policy](#).

If you consider that your rights have not been respected, you may at any time make a complaint to the Data Protection Authority, Rue de la Presse/Drukpersstraat 35, 1000 Brussels, email: contact@apd-gba.be (see also <https://www.dataprotectionauthority.be>).

HOW CAN YOU BE UPDATED AS TO ANY AMENDMENTS TO THIS PRIVACY POLICY?

This Policy may be amended. You can consult the most recent version of our Privacy Policy at any time on our website.

This Privacy Policy was last amended on 4 April 2023.

HOW CAN YOU CONTACT US?

The FSMA has a Data Protection Officer (DPO), who is your contact person for any questions or requests you may have regarding the processing of your personal data.

If you have questions about this Privacy Policy or wish to exercise your rights, you can contact us in the following ways;

- via email to dataprotection@fsma.be; or
- by letter to:

**Financial Services and Markets
Authority (FSMA)**
Attn: Data Protection Officer
rue du Congrès/Congresstraat 12-14
1000 Brussels (Belgium)